

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

SIERRA CLUB,

*Plaintiff,*

v.

ENERGY FUTURE HOLDINGS  
CORPORATION and LUMINANT  
GENERATION COMPANY LLC,

*Defendants.*

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Case No. 5:10-cv-00156-MHS-CMC

**NOTICE OF RULING FOLLOWING NON-JURY TRIAL IN RELATED CASE**

This case is presently set for a pre-trial conference on April 29, 2014. Doc. 200. This date and other approaching pretrial deadlines were set following a joint motion of the parties in light of the related case in the United States District Court for the Western District of Texas “involving the same parties and similar claims” but a different plant (Big Brown). Doc. 123. That related case is styled *Sierra Club v. Energy Future Holdings Corporation and Luminant Generation Company LLC*, No. 6:12-cv-00108-WSS (“Big Brown case”).

The Big Brown case was tried before Judge Walter S. Smith, Jr., on February 24–26, 2014. Following the non-jury trial, the Court ruled in favor of Defendants on all claims and denied all relief requested by Sierra Club.<sup>1</sup> See Minute Entry, Doc. 261, *Sierra Club v. Energy*

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<sup>1</sup> The claim tried to Judge Smith was Sierra Club’s “opacity” claim which is the same as Count I of the complaint here. Doc. 1 ¶¶ 34–39. The primary issues tried included whether the plant’s opacity violated the Clean Air Act, whether the affirmative defenses in 30 Texas Administrative Code § 101.222 had been met, and whether Sierra Club was entitled to any monetary penalty or injunctive relief. Judge Smith denied Sierra Club any relief on the opacity count. Count II of the Big Brown case (particulate matter) was dismissed by Judge Smith on

*Future Holdings Corporation and Luminant Generation Company LLC*, No. 6:12-cv-00108-WSS (W.D. Tex. Feb. 27, 2014).

A copy of the docket entry reflecting the Court's ruling in the Big Brown case is attached. Defendants notified the Court of other rulings in the Big Brown case by notice filed February 15, 2014. Doc. 201.

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summary judgment. Doc. 201-1 (attaching Judge Smith's order granting Defendants' motion for partial summary judgment based on jurisdictional bar in 42 U.S.C. § 7607(b)(2)).

Respectfully submitted,

/s/ P. Stephen Gidiere III  
Counsel for Defendants

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing motion was served by ECF on the 28th day of February, 2014, on counsel of record for Plaintiff.

/s/ P. Stephen Gidiere III  
Counsel for Defendants